

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

AGRIGENETICS, INC.,)	
)	
Plaintiff,)	
vs.)	NO. 1:08-cv-00802-TWP -TAB
)	
PIONEER HI-BRED INTERNATIONAL,)	
INC.,)	
)	
Defendant,)	
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PIONEER HI-BRED INTERNATIONAL,)	
INC.,)	
)	
Counter Claimant,)	
vs.)	
)	
AGRIGENETICS, INC.,)	
)	
Counter Defendant.)	

ORDER DENYING DEFENDANT’S MOTION TO BIFURCATE

This matter comes before the Court on Defendant, Pioneer Hi-Bred International, Inc.’s (“Pioneer”), Motion to Bifurcate Liability and Damages at Trial (Dkt. 203). The issues have been fully briefed. For the reasons stated herein, the Court **DENIES** the Motion to Bifurcate.

A court may order a separate trial of any issue when a separate trial would be “in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy ...” *MCI Communications v. American Tel. & Tel. Co.*, 708 F.2d 1081, 1166 (7th Cir.1983); Fed.R.Civ.P. 42(b). *See also Berry v. Deloney*, 28 F.3d 604, 610 (7th Cir.1994). Bifurcation is proper when: 1) it serves the interest of judicial economy or is done to prevent prejudice to a party; 2) does not unfairly prejudice the nonmoving party; and 3) does not violate the 7th Amendment. This Court has discretion to bifurcate pursuant to Rule 42(b) and

considers the benefits and drawbacks to bifurcation on a case by case basis. *See Krocka v. City of Chi.*, 203 F.3d 507, 516 (7th Cir.2000); *see also Kimberly-Clark Corp. v. James River Corp. of Va.*, 131 F.R.D. 607, 608 (N.D.Ga.1989). The party seeking bifurcation bears the burden of proving that bifurcation is warranted. *Real v. Bunn-O-Matic Corp.*, 195 F.R.D. 618, 620 (N.D.Ill.2000).

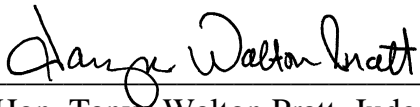
In this matter, bifurcation does little to “secure the just, speedy, and inexpensive determination of this action.” *BASF Catalysts LLC v. Aristo, Inc.*, No. 07-222, 2009 WL 523123, at * 1 (N.D.Ind. Mar.2, 2009). Another reason to deny bifurcation is that damages and liability are not easily compartmentalized. For example, jurors may need to consider Pioneer’s defense of non-materiality of the breach, and the issue of sublicensing in order to determine the issue of damages.

This Court is not convinced that the liability and damages issues presented by this case are too complex for a jury to understand. Bifurcation is unnecessary for the skilled advocates representing both parties to clarify and simplify the liability and damages issues at trial. Finally, in its Reply brief, Pioneer establishes that it is not seeking a true bifurcation of trial, but rather a form of trial management.

For all these reasons, the motion to bifurcate damages from liability is **DENIED**.

The Court however is concerned that both Pioneer and Agrigenetics are given a fair trial. The Court does not believe the jury would need to be shown the Court’s summary judgment order or even told about the entry’s existence. In a separate Entry (to be issued prior to the final pretrial conference) the Court will set forth a form of trial management that will allow Agrigenetics to fully try its case and at the same time minimize prejudice to Pioneer.

Date: 12/16/2010


Hon. Tanya Walton Pratt, Judge
United States District Court
Southern District of Indiana

Distribution to:

Sundeep K. Addy

BARTLIT BECK HERMAN PALENCHAR & SCOTT LLP
rob.addy@bartlit-beck.com

Christopher J. Braun

PLEWS SHADLEY RACHER & BRAUN
cbraun@psrb.com

Lindley J. Brenza

BARTLIT BECK HERMAN PALENCHAR & SCOTT LLP
lindley.brenza@bartlit-beck.com

Shelley M. Jackson

PLEWS SHADLEY RACHER & BRAUN
sjackson@psrb.com,twall@psrb.com

Todd J. Janzen

PLEWS SHADLEY RACHER & BRAUN
tjanzen@psrb.com,jcontos@psrb.com

Donald E. Knebel

BARNES & THORNBURG LLP
donald.knebel@btlaw.com,lori.robertson@btlaw.com,jralberts@dow.com,cstamas@btlaw.com

Deborah Pollack-Milgate

BARNES & THORNBURG
dmilgate@btlaw.com,hkelley@btlaw.com,cstamas@btlaw.com

Jennifer Lynn Schuster

BARNES & THORNBURG LLP
jschuster@btlaw.com,hkelley@btlaw.com,cstamas@btlaw.com

Aaron M. Staser

BARNES & THORNBURG LLP
aaron.staser@btlaw.com

Brian C. Swanson

BARTLIT BECK HERMAN PALENCHAR & SCOTT LLP
brian.swanson@bartlit-beck.com,anita.seggelink@bartlit-beck.com,tom.armento@bartlit-beck.com